THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.19745 of 2004

Dated 13-02-2006

Between:

Bungapatla Ramesh and others.

..... PETITIONERS

AND

The District Collector, Nalgonda District, and others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.19745 of 2004

O R D E R:

The petitioners are the members of the fifth respondent-Society. Earlier they filed W.P.No.22603 of 2001 questioning the order dated 27-04-2001 passed by the fourth respondent herein-Assistant Director of Fisheries, Nalgonda, as confirmed in appeal by order dated
27-09-2001, thereby disqualifying the petitioners as the members of the Society. This Court, by order dated 26-12-2001, allowed the said writ petition on the ground that in view of the amendment to Section 21 (3) of the Andhra Pradesh Cooperative Societies Act, 1964 (hereinafter referred to as 'the Act') by Act 22 of 2001, the fourth respondent herein has no jurisdiction and it is only the General Body of the Society which can consider the allegations as to the disqualification of the members. However, subsequently the sixth respondent herein raised a dispute before the fourth respondent under Section 61 of the Act with regard to the eligibility of the petitioners to continue as the members of the fifth respondent-Society. It is not in dispute that the fourth respondent is the functional Registrar and thus competent to enquire into the dispute under Section 61 of the Act. However, having regard to the order dated 26-12-2001 passed by this Court in W.P.No.22603 of 2001, the fourth respondent did not entertain the complaint made by the sixth

respondent. Aggrieved by the same, the sixth respondent filed W.P.No.124 of 2004. This Court by a detailed order dated 16-02-2004 clarified that the Assistant Director of Fisheries being the functional Registrar is competent to discharge the powers under Section 61 of the Act and accordingly allowed the writ petition and remitted the matter to the Assistant Director of Fisheries with a direction to entertain the application filed under Section 61 of the Act and pass appropriate orders within a period of eight weeks. In pursuance thereof, the fourth respondent has taken up the enquiry and after issuing notice to all the parties concerned passed an order dated 14-10-2004 holding that the writ petitioners herein are ineligible, and accordingly, removed them as the members of the fifth respondent-Society. The said order is under challenge in this writ petition.

Having heard the learned counsel for both the parties and having perused the material on record, I do not find any substance in the contention of the learned counsel for the petitioners that the fourth respondent has no jurisdiction to pass the impugned order dated 14-10-2004. Though the learned counsel for the petitioners vehemently contended that the impugned order amounts to wanton and conscious overreaching of the judgment dated 26-12-2001 passed by this Court in W.P.No.22603 of 2001 and constitutes a contempt, I am unable to agree. It is relevant to note that this Court in W.P.No.124 of 2004 having considered all the aspects in detail clarified that the Assistant Director of Fisheries while exercising the powers as functional Registrar is competent to entertain the dispute under Section 61 of the Act. Admittedly the impugned order dated 14-10-2004 was passed by the fourth respondent in exercise of powers under Section 61 of the Act after affording due opportunity to both the parties. In the circumstances, it cannot be held that the fourth respondent has no jurisdiction.

However, the learned counsel for the petitioners raised a further contention stating that the dispute raised by the sixth respondent herein is not a dispute touching the constitution, management or

business of the Society and therefore, such question ought not to have been entertained by the fourth respondent. As per sub-Section (2) of Section 61 of the Act, if any question arises as to whether a dispute referred to the Registrar is a dispute touching the constitution, management or the business of a Society, such question shall be decided by the Registrar alone. Nothing has been placed before this Court to show that though such an objection was raised by the petitioners, the fourth respondent failed to consider the same.

Be that as it may, under Section 76 of the Act, an efficacious remedy of appeal is available against the order passed under Section 62 of the Act. In the circumstances, the petitioners ought not to have availed the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India without exhausting the efficacious alternative remedy of appeal available under the statute. Moreover as pointed above, whether the petitioners raised an objection as to the maintainability of the dispute under Section 61 of the Act or not is a question to be decided only on verification of the records and after hearing both the parties. Such an enquiry cannot be undertaken by this Court while exercising jurisdiction under Article 226 of the Constitution of India.

Accordingly the writ petition is disposed of granting leave and liberty to the petitioners to work out the remedy of appeal as provided under the Act. If any such appeal is preferred within a period of two weeks from today, the same shall be entertained and appropriate orders be passed in accordance with law. Keeping in view that by virtue of the interim order dated 28-10-2004 passed by this Court the petitioners are continuing as the members of the fifth respondent-Society, I deem it appropriate to direct that the impugned order dated 14-10-2004 shall not be given effect to for a period of four weeks from today. No costs.

(G. ROHINI, J)

Date:13 -02-2006

Note: Issue C.C. in two days.

B/o

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